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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules	)	CS Docket No. 95-178
	)	
Implementation of Section 301(d) of the Telecommunications Act of 1966	)	
	)	
Market Determinations	)	

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To: The Commission

Comments of Southern Broadcast Corporation of Sarasota

Southern Broadcast Corporation of Sarasota ("SBC") submits the following comments in response to Report and Order and Further Notice of Proposed Rule Making, CS Docket No. 95-178, FCC 96-197, released May 24, 1996. Therein, the Commission decided to use Nielsen Designated Market Areas (DMA's), instead of Arbitron Areas of Dominant Influence ("ADI's") for purposes of defining the major television markets and their designated communities under Rule 76.51. As demonstrated below, this determination will have a serious adverse impact upon small market television stations that are swept into larger television markets by the change of market definition, unless sensible measures are taken to minimize the impact of the Rule change. Relief could be provided in the form of a mechanism whereby small market stations could elect to "opt out" of the larger market for purposes of Rule 73.658(m) and its impact on non-network territorial exclusivity arrangements. Even such minor relief as varying the name of the market from the name listed in the Nielsen Ratings Services could have a significant effect on small

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market stations. The Commission should consider these and other measures to ensure that smaller stations located on the periphery of large markets can continue to have access to non-network programs.

SBC submits that the problems generated by revising Rule 76.51 to reflect Nielsen DMA's instead of Arbitron ADI's are not so much problems of cable television carriage. The real problem, from SBC's perspective, is that Nielsen, unlike Arbitron, makes it virtually impossible for small television markets existing on the periphery of larger television markets to become their own DMA. Instead, Nielsen aggregates these small market television stations into the larger market, regardless of their local service to their home counties. The result of this is to award counties on the fringe of large ADI's to the large market television stations serving central cities instead of to the small market television stations serving their local communities.

SBC is the licensee of a station that will be greatly affected by Rule 76.51's shift from Arbitron ADI to Nielsen DMA Market definitions. SBC's Station, WWSB, Sarasota, Florida serves to the Sarasota ADI, the 154th largest television ADI. This ADI is adjacent to the Tampa-St. Petersburg ADI, the 16th largest television market. Nielsen lumps both markets into a single Tampa-St. Petersburg-Sarasota DMA, the 15th largest Nielsen DMA. This market grouping does not recognize the superior service that Station WWSB provides to its home county, Sarasota. Nielsen awards Sarasota County to the Tampa-St. Petersburg stations for its own, private business reasons.

SBC does not fault Nielsen's business judgement in marketing its services. However, SBC submits that it would be a mistake to deny Sarasota television stations access to non-network programming on the basis of Nielsen's determination to sell the Sarasota and Tampa market survey as a single package.

In General Docket No. 87-24, the Commission conducted a lengthy inquiry into its rules relating to program exclusivity in the cable and broadcast industries. Of particular importance in that inquiry was the impact of Rule 73.658(m) (the so-called "Thirty-Five Mile Rule") on the ability of smaller television stations to obtain access to non-network programs, i.e. syndicated programs. SBC's filings in general Docket No. 87-24 demonstrated how the television table of allotments distorts the market for syndicated programming, placing stations licensed to smaller communities at great disadvantage in obtaining access to programming.[1]

Rule 73.658(m) provides stations licensed to smaller communities with access to syndicated programming by limiting the amount of territorial exclusivity larger market television stations can purchase from syndicators. Specifically stations are permitted to purchase programming exclusivity only within an area of 35 miles from the station's community of license. In other words, a station in Tampa is not allowed to prevent a syndicator from selling its programs to stations licensed to communities such as Sarasota, which is located more than 35

[1]SBC requests that its filings in general Docket No. 87-24 be incorporated herein by reference. These filings are: Comments of Southern Broadcast Corporation of Sarasota, filed July 22, 1987; Reply Comments of Southern Broadcast Corporation of Sarasota, filed September 22, 1987; Further Comments of Southern Broadcast Corporation of Sarasota, filed January 17, 1989; and Further Reply Comments filed February 3, 1989.

miles away from Tampa.

An exception to the 35 mile limitation on territorial exclusivity set out in Rule 73.658(m) exists with respect to television stations licensed to another designated community in a hyphenated market specified in the market listings contained in Rule 76.51. In other words, if Sarasota were to become a listed community in the market listing for Rule 76.51, Tampa television stations could prevent Sarasota television stations from purchasing syndicated programming, even though Sarasota is more than 35 miles distant from Tampa. This is the very serious problem that amending Rule 76.51 poses for Station WWSB. If Sarasota is identified as a hyphenated community in the market listings of Rule 76.51, Station WWSB will have its access to syndicated programs severely restricted by territorial exclusivity arrangements made for the Tampa television stations. This would deny Station WWSB's access to the types of attractive syndicated programs that attract viewers and advertisers that help make local television in Sarasota possible. Station WWSB would not be able to compete with Tampa stations to purchase these attractive syndicated programs because it does not have access to the Tampa market's audiences and cannot, therefore, attract the types of advertising revenue that Tampa stations rely upon to support their program purchases.

SBC urges the Commission to take sensible measures to prevent the modification of Rule 76.51 from destroying the access of small community television stations to syndicated programs. One possible approach would be to modify 73.658(m) to eliminate the exception that allows television stations to secure exclusivity against a television station licensed to another designated community in a hyphenated market. Another approach would be to use Nielsen DMA's as the basis of market definitions under Rule 76.51, but to continue using the present Rule 76.51 designations for the market. Under this scenario, the Nielsen Tampa-St. Petersburg-Sarasota market would be the 15th market listed in Rule 73.51. However, the market designation would remian "Tampa-St. Petersburg-Clearwater-Lakeland, Florida", just as it is presently designated in Rule 76.51(a)(28). Changes in the hyphenated names of markets could continue to be made on a case by case basis in rule-making proceedings. Stations such as WWSB could continue to have access to non-network programming unless an adverse Commission decision is made on an appropriate rule-making proposal to add hyphenated communities to the Station's market designation.

One final method that might be employed to prevent the new DMA market definitions from harming small market stations would be to permit small market stations to opt out of their new Nielsen market. Allowing a station the option of retaining its old ADI for purposes of non-network territorial exclusivity would allow cable carriage decisions to be based on the new Nielsen markets, without adversely impacting the program supply to stations located in small communities.

In view of the foregoing, Souther Broadcast Corporation of Sarasota requests that appropriate rules and procedures be implemented to prevent the new revision of Rule 76.51 from adversely impacting small market television stations access to syndicated programming.

Respectfully submitted,

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